IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10514 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUREKHABEN W/O RAVINDRA KAUTIK PATIL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MR DN PATEL Ld. AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 10/03/2000

ORAL JUDGEMENT

The detenu, who has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 by an order made by the Commissioner of Police, Surat on 1.8.99 detaining the detenu for a period of one year, has challenged the aforesaid order in

this petition under Article 226 of the Constitution of India.

The grounds of detention served on the detenu, are produced on record vide Annexure-C. Reading the grounds of detention, it clearly transpires that the detenu is engaged in bootlegging activities. At the time of raid on 21.5.99, the detenu and her associates Kishor Keshri Mathura Keshri and Gitaben wife ofRamesh Tarachand Patil were found in possession of 300 bottles of liquor, worth Rs. 12000/ in three gunni bags. Seeing the police party, her associates ran away from the site. The investigation is in progress in connection with the offence in question. On 20.6.99 at about8.30pm witness of Limbayat was with his vehicle. The detenu with her associates whose names have been referred earlier, asked the said witness to allow her to use his vehicle for carrying 3 gunni bags containing bottles of english liquor. On refusal, by force the witness was compelled to open the Decky and prohibited liquor was kept in the said Decky of the vehicle. The detenu and her associates were occupied the seat in the rear.Her associate Kishor occupied the seat near the driver's seat and by point of a knife known as 'Rambo' issued a command to the witness to drive the vehicle in area known as Limbayat. Associates of the detenu who were found present in that area removed the english liquor.The detenu and her associates also came out from the vehicle. When the said witness demanded the amount for the use of the vehicle, all the three pushed out the said witness from the vehicle and started beating. On shouts being raised, persons driving vehicles and persons residing nearby huts collected there. Out of them, some came forward to save the aforesaid witness. The associates of the detenu namely Kishor took out 'Rambo' knife and other associates arrived with piece of wood and started beating the persons, as a result of which, the people ran away with a view to save their lives. On account of this, the traffic was disturbed and there was an atmosphere of tense. The witness was allowed to go only after seeking pardon on stating that in future he will not demand charges for vehicle. The witness was threatened that if complaint is lodged, he will be murdered and the dead body will be thrown on the railway track.

Another incident which took place on 4.7.99 has been considered by the detaining authority wherein the witness was asked to transport the english liquor in his rickshaw. The witness afraid of a police raid,refused for the same asking the detenu and her associates to find out other vehicle. The witness was beaten as a result of

cry raised, people gathered. When some of them tried to save the witness, the associate of the detenu namely Kishor came with Rampuri knife and other associates came with iron rod and started beating innocent people,as a result of which, shops were closed, the persons residing in the locality did not come out of the houses. There was an atmosphere of tense. Only after the request made by the witness, he was allowed to go. The witness was also threatened that if information is convenyed, the members of his family will be killed.

The detaining authority, in view of the aforesaid incident, arrived at a conclusion that on account of the acts of the detenu, atmosphere of terror was created and situation of law and order was disturbed. People were feeling insecure, as a result of which, they ran away from place of occurance. The house, shops and larry-galla were also closed soon after the incident. The detenu continued her illegal activities using force and on account of criminal acts of the detenu, law and order situation for a temporary period was disturbed, there was an impact on the even tempo of the life of the community. There were other witness, but on account of the terror they were not willing to disclose their names, but only after assuring that their names shall not be disclosed, they naratted the incident. The detenu acted in a manner prejudicial to the maintenance of public order.

The detaining authority was satisfied that in view of the aforesaid activities, the detenu is required to be detained. Learned advocate for the petitioner submitted that in the instant case, order of detention is contrary to law. The detaining authority has no right whatsoever to pass an order detaining the detenu for a period of one year. Learned advocate submitted that under sec. 3 of the Act, powers conferred on the Police commissioner are only to detain a person on being satisfied that the person is required to be detained. After the Advisory Board has considered the material placed before it, it is for the Advisory Board to give an opinion as to whether there is sufficient cause for the detention of the detenu. Under sec. 13 of the Act,only after the opinion of the Advisory Board to the effect that there is sufficient cause for the detention of the detenu, the State Government has to confirm the detention order and has to continue the detention of the detenu for a period, not exceeding the maximum period prescribed by section 14 as it thinks fit. Section-14 prescribes maximum period for which any person may be detained in pursuance of any detention order made under this Act

which has been confirmed under section-13, shall be one year from the date of detention. Thus, reading the scheme of the Act, it becomes clear that the detaining authority on subjective satisfaction can detain the detenu and can pass an order of detention and,thereafter it has to make a report to the State Government together with the grounds on which the order has been made alongwith other particulars. Thus, the order of detention in the instant case made by the Commissioner of Police detaining the detenu for a period of one year is contrary to the provisions contained in the Act. It is required to be noted that if the Board reports that there is sufficient cause for detention, only thereafter the Government has to confirm the order of detention and continue the detention of the person concerned, for such a period. Therefore, Advisory Board reports that, in its opinion, there is sufficient cause for the detention of the detenu, the Government has to determine the period of detention not exceeding the maximum period. From the scheme of the Act, it is very clear that fixing of the period of detention in the initial order itself is contrary to the scheme of the Act and therefore the order of detention must be held to be bad. In view of what is stated hereinabove, the order of detention on this ground is required to be quashed. The Court has allowed this petition on this ground only and not any other grounds. Therefore, it will be for the appropriate authority to take appropriate action in the matter.

In the result, this petition is allowed. The detenu-Smt. Surekha w/o Ravindra Kautik Patil is ordered to be released forthwith, if not required for any other case.Rule is made absolute with no order as to costs.

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